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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/026,300	12/21/2001	Brian Harvey	1238-0006	8091
7590	11/07/2003		EXAMINER	
Michael Diaz 555 Republic Drive Suite 200 Plano, TX 75074			BURNHAM, SARAH C	
			ART UNIT	PAPER NUMBER
			3636	

DATE MAILED: 11/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/026,300	HARVEY, BRIAN	
	Examiner	Art Unit	
	Sarah C. Burnham	3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 15 is/are rejected.
- 7) ☒ Claim(s) 11-14 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s): _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 8 is rejected under 35 U.S.C. 102(b) as being anticipated by Syler (3,232,686). Syler discloses a portable seat assembly (A) comprising a horizontal surface (11) and four support legs (12). A basket (20) is slidably mounted to an underside (unlabeled) of horizontal surface (11). Basket (20) comprises a bottom surface (22) and four generally vertical side walls (21). Two overhanging side edges (42) extend from a top portion (unlabeled) of two side walls (21). A means for slidably supporting (52) the two overhanging edges (42) is set in the underside (unlabeled) of horizontal surface (11). Basket (20) may be slid forward and aft as shown by the solid and phantom lines drawn in Figure 1.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 1-3, 6 and 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cairo (4,489,448) in view of Ulm (2,885,694). Cairo discloses a portable seat assembly (10) having a horizontal surface (11) with a plurality of holes (30). Horizontal surface (11) is supported by a first support (unlabeled) and a second support (unlabeled). First support (unlabeled) is comprised of a first leg (13), a second leg (13), and a first brace support (a single cross bar of element 15). Second support (unlabeled) is comprised of a third leg (13), a fourth leg (13) and a second brace support (the other cross bar of element 15). Second brace support (unlabeled) and first brace support (unlabeled) lay diagonally across each other on an underside (unlabeled) of horizontal surface (11). Cairo does not disclose a basket slidably mounted to the underside of horizontal surface (11).

Ulm teaches the use of a slidable basket (31) for mounting to an underside (unlabeled) of a horizontal surface (11) by way of brackets (17). Basket (10) comprises a generally horizontal bottom surface (33) and four generally vertical sides (34)(35)(36)(37). Two overhanging edges (32) extend outwardly from a top portion (unlabeled) of two opposing sides (34)(35). A means for slidably supporting the two overhanging edges (13) includes two guide rails (15)(16). Each guide rail (15)(16) has a lip (55) to support overhanging edges (13). The means for slidably supporting (15)(16) is hung below horizontal surface (11) by way of brackets (17). The basket can be slid out to either side of the horizontal surface (11) (column 1, lines 39-40).

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to hang basket assembly (10) taught by Ulm, from the horizontal

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surface (11) revealed by Cairo. Such an addition provide easy access to shower supplies for the seat occupant. Additionally, it would allow the seat occupant to keep shower supplies off the shower floor, thereby preventing accidental slips and falls due to supplies obstructing the shower floor.

5. Claims 4-5 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cairo (4,489,448) in view of Ulm (2,885,694), as applied to claim 1 above, and in further view of Gates (1,856,847). As presented above, Cairo, as modified, shows all claimed elements except an adjustable rod for affixing said basket to an edge of said horizontal surface.

Gates teaches the use of an article holder (Figure 1) for attachment to "an edge of a table." (lines 3-4). The device is adjustable in that it can be located anywhere along a horizontal edge. Table plate (10) would rest on top of horizontal surface (11), lower end (13) of supporting arm (12) would hook onto an overhanging edge (13) of basket (31).

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to modify Cairo, as modified, with the addition of the article holder taught by Gates. The addition of such an article holder "avoids the necessity of attempting to hold [articles]" (lines 46-48) and therefore aids in the avoidance of dropping and spilling items while in the shower.

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6. Claims 7 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cairo (4,489,448) in view of Ulm (2,885,694), as applied to claims 1 and 8 above, and in further view of Stanek (5,640,723). As disclosed above, Cairo, as modified, discloses all claimed elements with the exception of a basket having holes in it.

Stanek teaches the use of a basket (20) having holes (110) for use with a shower seat (Figure 1).

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to add holes (110), as taught by Stanek, to the basket (31) revealed by Cairo, as modified. Such an addition would allow water to drain out the basket (31) if it were placed in the shower and secondly it would allow for ventilation to assist in the drying out of the contents of the basket (31) if they were to get wet.

Allowable Subject Matter

7. Claims 11-14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Amendments/Arguments

8. The amendment filed on October 14, 2003 has been considered in its entirety. Remaining issues are detailed in the above sections.

With respect to claim 8, the applicant argues that Syler does not disclose a basket that slides out horizontally. It is of the Examiner's opinion, however, that the

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basket (20) does slide out horizontally because overhanging side edges (42) carried by basket (20) slide along horizontal grooves (52) located within the underside (unlabeled) of the horizontal surface (11). Because these side edges slide along the horizontal grooves, the Examiner believes that the basket is slid out horizontally.

With respect to claims 1- 6 and 15, the applicant argues that Cairo and Ulm do not disclose seating surfaces and are therefore not applicable. It is of the Examiner's opinion, however, that the foot support revealed by Cairo is fully functional as a seat. The surface need not be modified in anyway to function as a sitting surface. Furthermore, the bed disclosed by Ulm also function as a seat as disclosed. Nearly any surface could function as a seating surface. The location of the elements (i.e. in a room versus in a shower stall) does not carry patentable weight.

The arguments with respect to claim 11-14 are understood and those claims have been indicated as allowable above.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any


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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah C. Burnham whose telephone number is 703-305-7315. The examiner can normally be reached on M-Th 7:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on 703-308-0827. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-1113.


Peter M. Cuomo
Supervisory Patent Examiner
Technology Center 3600

SCB
October 31, 2003